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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6811

DATE COMPLAINT FILED: April 24, 2014

DATE OF NOTIFICATION: April 29, 2014

DATE OF SUPPLEMENT: May 14, 2014

DATE OF NOTIFICATION: May 20, 2014

LAST RESPONSE RECEIVED: July 24, 2014

ACTIVATED: September 2, 2014

EARLIEST SOL: January 15, 2019

LATEST SOL: April 30, 2019

ELECTION CYCLE: 2014

COMPLAINANT:

State Senator Daylin Leach

RESPONDENTS:

Marjorie 2014 and Jennifer May in her
official capacity as treasurer

RELEVANT STATUTE
AND REGULATION:

52 U.S.C. § 30102(c)¹
11 C.F.R. § 102.9(e)(2)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Marjorie 2014 ("Committee")² violated 11 C.F.R. § 102.9(e)(2) by spending general election funds on consultants and other vendors for the primary election and failing to maintain more cash-on-hand than the sum of general election contributions received less the sum of general election disbursements made. The Committee denies the allegation. As discussed below, we recommend that the Commission dismiss the allegation that the Committee violated 11 C.F.R. § 102.9(e)(2), and close the file in this matter.

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

² The Committee is the principal campaign committee for Marjorie Margolies, who was a candidate for the United States House of Representatives in 2014 from Pennsylvania's 13th Congressional District.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The Act requires treasurers to keep an account of all contributions received by a political
3 committee.³ The Commission's regulations permit a candidate's committee to receive
4 contributions for the general election prior to the primary election provided the committee
5 employs an acceptable accounting method to distinguish between primary and general election
6 contributions.⁴ Committees are permitted to use general election contributions to make advance
7 payments for general election purposes.⁵ The committee's records must demonstrate that prior to
8 the primary election, the committee's recorded cash-on-hand was at all times equal to or in
9 excess of the sum of general election contributions received less the sum of general election
10 disbursements made ("net general election funds").⁶

11 The Complaint alleges that the Committee spent "tens of thousands of dollars" in general
12 election funds on consultants and other vendors for the primary election.⁷ The Complaint and
13 Supplement provide charts and spreadsheets analyzing the Committee's daily cash flow during
14 the 2014 April Quarterly and Pre-Primary reporting periods purporting to demonstrate that the
15 Committee violated 11 C.F.R. § 102.9(e)(2) by failing to maintain more cash-on-hand than the
16 net general election funds.⁸ According to the Complainant's analysis, the Committee's cash-on-
17 hand was less than its net general election funds from January 15 through March 30, 2014, and

³ 52 U.S.C. § 30102(c).

⁴ 11 C.F.R. § 102.9(e)(1).

⁵ *See* Advisory Op. 1986-17 (Friends of Mark Green) at 4 (concluding that the Act did not prohibit a committee from using general election contributions to make expenditures for the general election before the primary election, such as advance payments or deposits in connection with the general election).

⁶ *See* 11 C.F.R. § 102.9(e)(2).

⁷ Compl. at 1 (Apr. 24, 2014).

⁸ *Id.* at 1-3 and Attach. at 1-4; Supp. Compl. at 1-3 (May 14, 2014).

1 from April 1 through April 30, 2014.⁹ As noted in the Complaint, the Committee did not
2 disclose any disbursements for the general election.¹⁰

3 The Complaint alleges that the Committee's deficit ran as great as \$71,427, and that as of
4 the end of the Pre-Primary reporting period on April 30, 2014, the Committee had \$151,448 in
5 cash-on-hand, less than the \$177,088 raised for the general election.

6 The Committee responded that it raised \$177,188 in contributions designated for the
7 general election, as permitted by 11 C.F.R. §§ 102.9(e) and 110.1(b).¹¹ The Committee asserts
8 that it "agreed to advance a portion of these funds to its principal campaign vendors in order to
9 secure their services, availability and commitment for the general election," and that the
10 advanced funds would be available to pay for general election media and consulting expenses of
11 the vendors.¹² According to the Committee, it advanced the funds on the condition that they
12 would be refunded to the Committee if the candidate did not secure the nomination, and the
13 vendors refunded the advance payments to the Committee after Margolies lost the primary
14 election.¹³ The Committee's response does not detail the amount of funds advanced and
15 refunded or identify its vendors. The Committee, however, disclosed refunds received from two
16 vendors, as detailed in the chart below:

⁹ Compl. at 1-2; see Supp. Compl. at 1-2.

¹⁰ Compl. at 3.

¹¹ Resp. at 1 (July 24, 2014). We note that there is an unexplained \$100 discrepancy between the Complaint's assertion that the Committee raised \$177,088 in general election contributions and the Committee's assertion that it raised \$177,188. See Supp. Compl. at 1; Resp. at 1. This discrepancy is not material to the analysis in this report.

¹² Resp. at 1.

¹³ *Id.* Because Margolies lost the primary election, the Committee was required to refund, redesignate or reattribute \$177,188 in general election contributions within 60 days of the date of the election. See 11 C.F.R. § 102.9(e)(3); Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo); Supp. Compl. at 2. The Committee timely refunded these general election contributions. See 2014 October Quarterly Report at 14-40 (Oct. 15, 2014) (on July 16, 2014, within 60 days of the primary election, the Committee refunded \$177,188 in general election contributions).

Refunds from Vendors to Committee

<u>Date</u> ¹⁴	<u>Payor</u>	<u>Purpose</u>	<u>Amount</u> ¹⁵
May 18, 2014	Black Blue Media, Inc.	Refund of Media Account	\$78,750.00
July 14, 2014	Black Blue Media, Inc.	Refund of Media Account	\$40,000.00
July 14, 2014	Info Voter Technologies, Inc.	Refund	\$92,000.00
July 14, 2014	Info Voter Technologies, Inc.	Refund	\$18,000.00

As shown in the chart, the Committee received refunds totaling \$150,000 after the May 20, 2014, primary election, and it appears that at least two of these refunds totaling \$132,000 reflect the return of advances that the Committee made to the vendors for general election services.¹⁶ And, and as explained above, *see supra* n.15, the Committee specifically confirmed that the \$92,000 refund from Info Voter Technologies was made to refund general election advances.¹⁷ Thus, the Committee's advances appear to reduce its net general election

¹⁴ See 2014 July Quarterly Report at 63 (July 15, 2014); 2014 October Quarterly Report at 7 (Oct. 15, 2014).

¹⁵ The Committee disclosed disbursements totaling \$118,750 to Black Blue Media, the same amount it received in refunds from Black Blue Media. See 2013 October Quarterly Report at 95 and 96 (Oct. 15, 2013); 2013 Year End Report at 82 (Jan. 31, 2014); 2014 April Quarterly Report at 84 (Apr. 15, 2014), 2014 Pre-Primary Report at 33 (May 8, 2014). The Committee also disclosed disbursements totaling \$92,000 to Info Voter Technologies, \$18,000 less than the \$110,000 it received in refunds from Info Voter Technologies. See 2013 October Quarterly Report at 104, 2013 Year End Report at 92 and 93, 2014 April Quarterly Report at 100 and 101. The Commission's Reports Analysis Division ("RAD") sent the Committee a Request for Additional Information ("RFAI") on March 3, 2015, regarding this apparent \$18,000 over-refund by Info Voter Technologies. On April 10, 2015, the Committee responded to the RFAI, stating that it had "miscommunicated the amount of funds that had been advanced to Info Voter Technologies for the general election. The correct amount should have been \$92,000." Form 99 Miscellaneous Document to the Commission (Apr. 10, 2015). The Committee has since refunded \$18,000 to Info Voter Technologies, disclosing payments to Info Voter Technologies of \$17,201.89 on March 23, 2015, and \$799.11 on March 31, 2015, for "Return of General 2014 Refund Overage." See 2015 April Quarterly Report at 6 and 7 (Apr. 13, 2015).

¹⁶ The \$132,000 total includes the \$40,000 refund from Black Blue Media on July 14 and the \$92,000 refund from Info Voter Technologies on July 14. The \$18,000 refund does not correspond to an advance made by the Committee. As noted above, the Committee reimbursed the vendor for this excessive refund on March 23 and March 31, 2015. See *supra* n.15.

¹⁷ See Resp. at 1. On its disclosure reports, the Committee identified disbursements to Black Blue Media and Info Voter Technologies as being made for the 2014 primary election and not for the general election. See 2013 October Quarterly Report, 2013 Year-End Report, 2014 April Quarterly Report and 2014 Pre-Primary Report. The Committee's disclosures of the vendors' refunds were similarly marked as "primary."

1 funds which, in turn, reduces the amount of cash-on-hand necessary to meet Section
2 102.9(e)(2)'s requirement that cash-on-hand at all times equal or exceed the net general election
3 contributions. Though the Complaint alleged that the cash-on-hand deficit was as large as
4 \$71,427, a deficit in this amount appears to have been adequately offset by the advance
5 payments for the general election that were at least \$92,000 and may have been as much as
6 \$132,000.

7 Under the circumstances, we believe this matter warrants dismissal. The Committee's
8 advance payments to the vendors appear to have eliminated any deficit under Section 102.9(e)(2),
9 and we do not believe it is worth the Commission's resources to investigate this matter to
10 determine for certain whether there remained any deficit.¹⁸ Accordingly, we recommend that the
11 Commission dismiss the allegation that the Committee violated 11 C.F.R. § 102.9(e)(2). *See*
12 *Heckler v. Chaney*, 470 U.S. 821 (1985).

13 III. RECOMMENDATIONS

- 14 1. Dismiss the allegation that Marjorie 2014 and Jennifer May in her official capacity as
15 treasurer violated 11 C.F.R. § 102.9(e)(2).
16
- 17 2. Approve the attached Factual and Legal Analysis.
18
- 19 3. Approve the appropriate letters.
20

¹⁸ Without doing a full analysis of the Committee's receipts and disbursements, a precise calculation of the Committee's net general election funds under Section 102.9(e)(2) is not possible – for example, the available information does not indicate which disbursements to Black Blue Media correspond to its July 14 refunds – and thus it is not certain that there was never a deficit.

4. Close the file.

Date

6-26-15

Kathleen Guith
Kathleen Guith
Deputy Associate General Counsel
for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Delbert K. Rigsby by MA
Delbert K. Rigsby
Attorney

140747410007